



## ***Ball v. Kasich***

### **General Overview and Background Information**

On March 31, 2016, Disability Rights Ohio (DRO) announced it filed a lawsuit in U.S. federal court against the Governor of Ohio and other state officials on behalf of six individuals and one organization for alleged non-compliance of the Americans with Disabilities Act (ADA), Section 504, and Medicaid requirements.

DRO claims that the state government has not done enough to prevent Ohioans with developmental disabilities (DD) from being unnecessarily admitted to care facilities that DRO considers to be institutions – places in which people with disabilities live, work, and receive care while separated from the wider community.

The suit is primarily concerned with intermediate care facilities (ICFs) that have eight or more residents. ICFs are live-in care centers for people with developmental disabilities. DRO's stated intention is to give residents of these facilities more choices in when and how to receive state-funded residential, employment, and other day services.

This litigation has the potential to touch the lives of thousands of Ohioans with developmental disabilities and their families. As such, the Ohio Association of County Boards of DD (OACB) has prepared this document to explore the potential impacts of this litigation on various individuals and organizations in Ohio's DD system. OACB is not a party to this case. This document has been produced for educational purposes only, and the information contained herein will be updated as details of the case are made public.

### **Frequently Asked Questions**

To explain some of the more specific aspects of this case in greater detail, OACB has constructed the following list of "Frequently Asked Questions." This list will be updated as the lawsuit progresses. Some answers may change as a result of future developments, so please check back often to ensure you are reading the most up-to-date version of the document.

#### ***Why is this suit being brought against the State of Ohio and its agencies?***

- Disability Rights Ohio (DRO) claims that the structure of Ohio's DD support system forces people with developmental disabilities into segregated settings to receive residential, employment, and other day services.
- While community-based alternatives exist, DRO argues that they are often out of reach to many people with developmental disabilities due to long waiting lists or lack of funding.
- The organization's lawsuit argues that those issues, which DRO sees as structural barriers to community care options, are a violation of the ADA, the Rehabilitation Act, and Medicaid requirements.

#### ***Who are the individuals or organizations bringing this case to court (plaintiffs)?***

- Six individuals along with the Ability Center in Toledo are named as plaintiffs in this case. The plaintiff is the party bringing the lawsuit and asking the court to take action. The lawsuit is seeking to become a class action, which means that the named plaintiffs are asking the court to allow them to act on behalf of all Medicaid-eligible adults with DD who, on or after March 31, 2016, are institutionalized or are at serious risk

of institutionalization in ICFs with 8 or more beds. Other individuals or organizations may seek to join DRO as plaintiffs in the lawsuit.

- As the lawsuit progresses, it is possible that a wide range of people with disabilities who are not ICF residents could also become part of the lawsuit as plaintiffs. Other entities may also be added as defendants.
- For this reason, the lawsuit could have important implications for all people with developmental disabilities, their family members, service providers, county boards of DD, and the state.

### ***Who are the individuals or organizations being sued (defendants)?***

- Governor Kasich, the Ohio Department of Developmental Disabilities, the Ohio Department of Medicaid and the Opportunities for Ohioans with Disabilities are currently listed as the defendants in initial court filings. A defendant is a person or entity that plaintiffs are holding responsible for violations and who may be required to provide remedies if the plaintiffs are successful. Other defendants may be added in the future as the case develops.
- County boards of DD, some of which run ICFs, have not been named as defendants at this time. However, it is likely that at least some county boards of DD will become parties to the suit in the future given the structure of Ohio's DD support system and the important role of county boards in providing services.
- Additionally, county boards may seek to become involved directly or through representatives to ensure that the people they serve have a voice in the proceedings.

### ***What specific goals does Disability Rights Ohio hope to achieve with this lawsuit?***

- Chief among DRO's stated goals with this lawsuit is to increase opportunities for current and potential ICF residents to have access to "community options," including community-based residential, employment, and other day services.
- The organization also states that Ohio needs to change how it funds DD services to give people with developmental disabilities more opportunities to live and work in the community.
- The lawsuit does not explicitly request that ICFs or sheltered workshops be closed, nor does it spell out any detailed goals related to the operation of sheltered workshops.
- DRO has stated that one of its primary goals is to increase opportunities for people with developmental disabilities to work in community settings with appropriate supports.
- OACB will update this document with additional details as they are made available and as the lawsuit evolves.

### ***When are new developments likely in this lawsuit?***

- Lawsuits of this magnitude may take years before a final resolution is reached. The exact length of time that this case will require to be resolved is unknown.
- All parties in the case are entitled to make motions, request extensions, and process other court filings. Each of these filings can take months or more to process and be given a hearing. For this reason, it is likely that each new development will be followed by a period in which it seems nothing is happening. However, the case will be slowly making its way through the court system during these times.
- OACB will continue to actively monitor the developments of the case and report on them to members when appropriate.



### ***Where will the lawsuit be heard?***

- The lawsuit is being filed in the U.S. District Court for the Southern District of Ohio in Columbus.
- The case will be decided before a federal judge. None of the claims will be heard by a jury.

### ***How could this lawsuit be decided in court?***

- The outcome or decision in this lawsuit cannot be predicted. Many actions will take place as the case makes its way through the court system that will have an effect on the overall outcome.
- However, as a matter of process, lawsuits of this nature are typically resolved in one of two ways: (1) by a judge through a court order, or (2) by a consent decree, which is a court-approved agreement reached by the parties in the case (similar to a settlement).
- If the case proceeds to a judgment and either party is unsatisfied with the judge's decision, the case could be appealed by either party to the Sixth Circuit Court of Appeals in Cincinnati. An unsatisfactory decision for either party in the Sixth Circuit Court of Appeals could be appealed all the way to the U.S. Supreme Court.

### ***How could Ohio's DD system change if the court rules against the state?***

- If DRO is successful in getting a court order or consent decree to force the State of Ohio to change Ohio's DD system, it is likely that there will be at least some changes in the use of ICFs and sheltered workshops.
- Any further predictions on the outcome of the case would be inaccurate at this early stage of the process.

### ***How do recent CMS rules affect this lawsuit?***

- The rules issued by CMS in 2014 require integration of all services paid through waivers. States are required to submit plans for compliance by March 2019, and Ohio is in the process of having its compliance plan approved.
- CMS rules on integration and CMS timing of compliance with integration mandates are not directly affected by this lawsuit. CMS rules on conflict free case management and the timing of implementation are not directly affected by this lawsuit.

## **Updates and Additional Information**

*This document will be updated as necessary as this case evolves. OACB members will be kept up to date on all of the developments with this lawsuit via typical communications channels, including the OACB Insider, PolicyBrief, and other means. Where appropriate, OACB legal counsel may work directly with individual county boards of DD on specific issues related to these legal proceedings.*